

ADMINISTRATIVE POLICY



STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

**TITLE: INDUSTRIAL WELFARE ACT:
APPLICATIONS, EXEMPTIONS, AND
INTERPRETATIONS**

NUMBER: ES.C.1

**CHAPTER: RCW 49.12
WAC 296-126**

REPLACES: N/A

ISSUED: 1/2/2002

ADMINISTRATIVE POLICY DISCLAIMER

This policy is designed to provide general information in regard to the current opinions of the Department of Labor & Industries on the subject matter covered. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations. This policy does not replace applicable RCW or WAC standards. If additional clarification is required, the Program Manager for Employment Standards should be consulted.

This document is effective as of the date of print and supersedes all previous interpretations and guidelines. Changes may occur after the date of print due to subsequent legislation, administrative rule, or judicial proceedings. The user is encouraged to notify the Program Manager to provide or receive updated information. This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

The department has authority to investigate and regulate conditions of labor under the Industrial Welfare Act (IWA). “Conditions of labor” regulated by RCW 49.12 are:

- Meal and rest periods.
- Provisions for personal privacy.
- Practices, methods and means by or through which labor or services are performed by employees (including bona fide physical qualifications in employment).

“Conditions of labor” do *not* include conditions or practices subject to WISHA (safety and health) statutes or rules.

Employers have a general duty to provide workplace conditions that do not endanger employee health, safety and welfare. Employers subject to the IWA must maintain workplace conditions to a level that will not endanger the health, safety or welfare of employees and to provide facilities, equipment, practices, methods, operations

and procedures that adequately protect employees' health, safety and welfare under WAC 296-126-094.

Meal and rest periods. Meal and rest periods are considered conditions of labor. Employees who are protected by the IWA are entitled to meal and rest breaks as set forth in WAC 296-126-092. The department's policies on meal and rest breaks are addressed in detail in administrative policy ES.C.6.

Employee access to personnel records. Employees who are protected by the IWA have the right to view their personnel records at least annually, per RCW 49.12.240-260. This right is considered a condition of labor, subject to investigation by the department. **See ES.C.7** for policies on personnel records.

Variances. The director or his or her designee has authority to issue variances to relieve employers from the obligations imposed by department rules governing wages, hours and conditions of employment. See RCW 49.12.105 and WAC 296-126-130. The department cannot, by variance, waive the obligations found in the statute. **See ES.C.9** for further discussion of variances.

Record keeping requirements. Employers who are subject to the IWA must keep and produce certain records. **See ES.D.1** for specific discussion of records required of employers under the IWA and under other wage and hour laws.

Definition of "Industrial Welfare Committee." Whenever the term "industrial welfare committee" or "committee" is used in RCW 49.12, or in department rules or policies, it shall mean the director of the Department of Labor and Industries and his or her designee or authorized representative.

Department authority under RCW 49.12. Assuming that RCW 49.12 applies to the type of employers and employees involved, the department has the authority to investigate wages, hours and conditions of labor. See RCW 49.12.041 and 49.12.091.

Relationship between Industrial Welfare Act and Minimum Wage Act (MWA). The IWA predates the MWA, therefore, many questions about wages, hours or working conditions may be more specifically addressed in the MWA, RCW 49.46, and in administrative policy ES.A.1 on minimum wage. When a specific provision of the MWA conflicts with or is inconsistent with a provision of the IWA which addresses wages or conflicts with or is inconsistent with an IWA rule (WAC 296-126), the analysis should be under the more specific provisions of the MWA.

However, if application of the IWA results in more favorable treatment of the worker, the IWA should be applied. RCW 49.46.120 of the MWA shall not displace any federal, state or local law or any rule or regulation issued thereunder, which is more favorable to employees than the provisions of the MWA or corresponding rules. **See ES.A.7.**

The department has authority to investigate and regulate payment of wages under the Industrial Welfare Act. The IWA requires that employers pay wages that are adequate for maintenance. “Wages adequate for maintenance” are at least the minimum wage required by RCW 49.46.020 or, in some cases, the subminimum wage set by the director.

Subminimum wages. The department has the authority under RCW 49.12.091 to set wage rates by rule for occupations not subject to the MWA if the department determines after an investigation that the wages paid in that industry are “inadequate for maintenance.” These wages can be less than the minimum wage rate established in RCW 49.46.020.

Once the department sets a subminimum wage rate by rule for a particular industry, it is unlawful for employers subject to RCW 49.12 to pay their employees less than the subminimum wage rate set by rule. See RCW 49.12.091.

For further information on whether an employer is properly paying subminimum wage rates, **see ES.C.4 (Pending)**, which discusses the types of workers and the criteria an employer must meet prior to paying a subminimum wage rate.

The department has the authority to investigate and regulate hours worked under the Industrial Welfare Act. “Hours worked” is considered to mean all hours during which the employee is authorized or required by the employer to be on duty on the employer's premises or at a prescribed work place. See WAC 296-126-002(8). Also **see ES.C.2** specifically on “hours worked.” “Hours worked” includes all time worked whether it is a full hour or less.

The department’s authority over hours worked includes investigations of excessive overtime. Employees protected by the IWA may complain to the department that “the number of hours or other matters relating to overtime employment is detrimental to the health, safety or welfare of the employee.” The department may investigate such complaints and issue findings and conclusions. If the circumstances are found to be detrimental to the health, safety or welfare of the employee, the Director *may* make additional rules or revise existing rules to address the conclusions of the investigation. See WAC 296-126-090.

When does the Chapter 49.12 RCW, the Industrial Welfare Act, apply?

The IWA generally regulates hours worked and conditions of labor and other wage issues that are not specifically covered by the MWA and other statutes relating to payment of wages, i.e., RCW 49.48 or RCW 49.52.

WAC 296-126, Standards of Labor, generally contains rules promulgated subject to RCW 49.12. All of these rules have the same force of law as the provisions of RCW 49.12 itself.

Which employers are subject to RCW 49.12?

Generally, an “employer” under RCW 49.12 is “any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in Washington State.” See RCW 49.12.005(4).

Which employees are subject to the protections of RCW 49.12?

The protections of RCW 49.12 apply to all employees who are employed by employers who are subject to RCW 49.12.

Definition of “employee.” Employees are those “employed in the business of their employer,” regardless of the type of work they perform, except those employees who are exempt.

Definition of “employ.” “Employ” means to engage, suffer or permit to work. See RCW 49.46.010(3) and WAC 296-126-002(3). Also **see ES.C.2** for discussion of hours worked.

Which employers are exempt from, or not subject to, RCW 49.12?

1. **Public employers:** RCW 49.12 does not apply to public employers, except for RCW 49.12.270-295 (sick leave to care for a child) and RCW 49.12.450 (employee wearing apparel). Public employers are defined in RCW 49.12.005(3) as: the state, any state institution, any state agency, political subdivision of the state, and municipal and quasi-municipal corporations.
2. **Sheltered workshops:** None of the provisions of RCW 49.12 apply to sheltered workshops per RCW 49.12.091.
3. **Tribal enterprises:** The department’s interpretation is that none of the provisions of RCW 49.12 apply to tribal enterprises operating within the confines of the reservation.
4. **Employers exempted by variance:** Employers who have been granted a variance may be exempt from the rules contained within WAC 296-126, which were adopted under RCW 49.12. The department has no authority to grant a variance from the statutory provisions of RCW 49.12. See RCW 49.12.105. Also **see ES.C.9** regarding variances for detailed discussion of application for, granting of and termination of variances under RCW 49.12.

An employer who has been granted a variance must comply with the terms of the variance. Non-compliance with the terms of the variance is treated in the same manner as a violation of the IWA and corresponding WACs.

Which individuals are exempt from the protections of RCW 49.12?

1. **Newspaper vendors or carriers:** The department construes the definition of newspaper vendors or carriers narrowly and does not include magazine carriers or vendors, those who distribute advertising circulars, or those who sell or distribute literature at sporting events, etc.
2. **Domestic or casual laborers in or about private residences:** "Casual" refers to employment that is irregular, uncertain or incidental in nature and duration. This must be determined on a case-by-case basis by looking at the nature of the work and the scope, duration and continuity of employment.

"Domestic" is limited to actual domestic work, i.e., babysitting, cooking, housecleaning, etc., and does not include yard work, home repair, construction, etc., although such work could be exempt as casual.
3. **Agricultural workers:** There are separate employment standards for agricultural workers in RCW 49.30 and WAC 296-131.
4. **Public employees:** Public employees are generally exempt and are not subject to the protections of the IWA, *except* that they are entitled to the protections of the Family Care Act (RCW 49.12.270-295) and the Wearing Apparel/Uniform statute (RCW 49.12.450). See RCW 49.12.005 (3)
5. **Volunteers:** Any individuals registered as volunteers with a state or federal volunteer program or any person who performs assigned or authorized duties for an educational, religious, governmental or nonprofit charitable corporation by choice and receives no payment other than reimbursement for actual expenses necessary to performing the volunteer services.

Volunteers are not allowed in a "for-profit" business. Volunteers are not allowed in a "for-profit" business. Any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer, who permits any individual to work, is subject to the provisions of the IWA.
6. **Bona Fide Executive, Administrative, Professional, Computer Professional or Outside Sales.** See WAC 296-126-510 to -540 for definitions. Also **see ES.A.9 (Pending)** for a detailed discussion and interpretations of these terms.
7. **Independent Contractors.** "Independent contractors," where the worker controls the work and the means by which the result is to be accomplished, are exempt from the protections of the IWA. A true independent contractor is exempt that person is not "employed" by an employer. However, an employer cannot avoid conforming to the IWA and related rules by merely referring to someone as an "independent contractor." Whether an individual is an independent contractor or an employee must be carefully evaluated on a case-by-case basis.

What is the enforcement authority of RCW 49.12 and WAC 296-126?

Civil penalties are applicable only for violations of the family care and minor work laws and rules. The department has specific authority to enforce the Family Care Act, RCW 49.12.270-295, and the minor work laws and rules, RCW 49.12.170, by imposing civil penalties. The department does not have authority to impose civil penalties for other violations of the IWA.

However, employers who violate RCW 49.12 or rules may be subject to criminal misdemeanor charges with criminal penalties or fines from \$25-\$1,000. See RCW 49.12.170. The department does not have legislative authority to assert criminal charges and criminal fines against such employers. Only a county or city prosecutor or other prosecutor can assert criminal charges and fines.

A civil cause of action for unpaid minimum or subminimum wages may be brought by the employee or by the department on an employee's behalf. If the violation by the employer is failure to pay the minimum wage set forth in RCW 49.46.020 or the minimum wage rate for learners, student learners, handicapped workers, minors and others working at a special wage rate set by the department, those employees have a private right of civil action to collect their unpaid wages, costs and attorney fees.

The department may bring such an action on the employees' behalf. The department has authority to order payment of all wages owed workers and institute actions necessary for collection. See RCW 49.48.040. Note, however, if the employee is not subject to a subminimum wage, but is entitled to the full minimum wage set forth in RCW 49.46.020, his or her private civil cause of action for unpaid wages, costs and attorney fees should be brought under RCW 49.46.090. The Department has authority to bring such an action on the employees' behalf. See RCW 49.46.090 and RCW 49.48.040. Also **see ES.A.1, Minimum Wage Act; ES.C.4 (Pending), Subminimum Wages; ES.C.9 Variances.**

The department should advise employees of implied right of private action to enforce provisions of RCW 49.12 even if no wages are owing. The department further interprets RCW 49.12 to include an implied private right of action to enforce the various provisions of RCW 49.12 and corresponding rules relating to wages, hours and conditions of employment (including meal and rest periods, right to examine personnel records, right to examine employment records, right to a workplace that does not endanger health, safety or welfare, etc.), regardless of whether the employee has a cause of action for unpaid wages. Aggrieved workers who contact the department will be informed of their right to seek private counsel in order to file a civil action against the employer.